

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 2:16-cr-00046-GMN-PAL

Plaintiff,

ORDER

RYAN W. PAYNE,

(Mot Clarify – ECF No. 1203)

Defendant.

12 Before the court is Defendant Ryan W. Payne’s Motion to Clarify Court’s Order Regarding
13 Severance. (ECF No. 1203). The motion asks the court to clarify whether its Order (ECF
14 No. 1108) constitutes a final order, or if it is a report and recommendation to which the parties
15 may object. Defendant Ammon Bundy has also filed a Motion for Joinder (ECF No. 1209).

16 || 28 U.S.C. § 636 states, in relevant part:

17 (A) a judge may designate a magistrate judge to hear and determine any pretrial
18 matter pending before the court, *except* a motion for injunctive relief, for judgment
19 on the pleadings, for summary judgment, *to dismiss or quash an indictment or*
20 *information made by the defendant, to suppress evidence in a criminal case, to*
21 *dismiss or to permit maintenance of a class action, to dismiss for failure to state a*
claim upon which relief can be granted, and to involuntarily dismiss an action. A
judge of the court may reconsider any pretrial matter under this subparagraph (A)
where it has been shown that the magistrate judge's order is clearly erroneous or
contrary to law.

22 (B) a judge may also designate a magistrate judge to conduct hearings, including
23 evidentiary hearings, and to submit to a judge of the court proposed findings of fact
and recommendations for the disposition, by a judge of the court, of any motion
excepted in subparagraph (A)

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. *A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. . . .*

27 28 U.S.C. § 636(b)(1) (emphasis added). LR IB 3-1 and 3-2 of the Local Rules of Practice address
28 the procedure for requesting that a district judge reconsider a matter that may be finally determined

1 by a magistrate judge pursuant to § 636(b)(1)(A), and objecting to a magistrate judge's findings
2 and recommendations submitted pursuant to § 636(b)(1)(B). Both LR IB 3-1 and 3-2 provide that
3 the deadline to file and serve a request for reconsideration or an objection to findings and
4 recommendations is 14 days after service of the order or findings and recommendations. The time
5 period for requesting review is the same. The standard of review is not. Orders are reviewed under
6 the "clearly erroneous or contrary to law" standard, while findings and recommendations are
7 reviewed de novo. LR IB 3-1(a), 3-2(b).

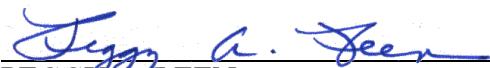
8 Here, there is nothing to "clarify." The Order (ECF No. 1108) plainly states it is an order.
9 Counsel for Payne was free to seek timely review of the order from the district judge and argue
10 that the undersigned lacked jurisdiction to enter an order and should have prepared a report of
11 findings and recommendation. He did not file a timely application requesting that the district judge
12 review this court's order under either standard of review.

13 Having reviewed and considered the matter,

14 **IT IS ORDERED** that Defendant Ryan W. Payne's Motion to Clarify (ECF No. 1203) is
15 **DENIED**.

16 **IT IS FURTHER ORDERED** that Defendant Ammon Bundy's Motion for Joinder (ECF
17 No. 1209), *i.e.*, request to join, is **GRANTED**.

18 DATED this 6th day of January, 2016.

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PEGGY A. LEEN
21 UNITED STATES MAGISTRATE JUDGE
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